Supreme Court, U.S
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No. _____

IN THE

Supreme Court of the United States

DONALD C. HUTCHINS,
Petitioner,

v.

THE COMPLIENT CORPORATION
Respondent

On Petition For Writ Of Certiorari
To The Supreme Court Of Ohio

PETITION FOR WRIT OF CERTIORARI

Donald C. Hutchins, *Pro Se*
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ACTING *PRO SE* to
DONALD C. HUTCHINS

QUESTIONS PRESENTED

1. Whether a state may impose its jurisdiction and obstruct a legally filed and ongoing federal patent infringement action subject to the limits of the Due Process Clause of the Fourteenth Amendment.

2. Whether a state may deprive a citizen of another state of intellectual property without due process of law subject to the limits of the Fifth Amendment.

3. Whether the principle of "privity" and Ohio's prohibition against *pro se* representation for corporate entities can be applied in terms of *res judicata* against a co-defendant acting *pro se* in defense of his intellectual properties rights granted by Congress through 35 U.S.C. § 101-376.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 14.1, the following list identified all the parties appearing here and in the court below:

The Petitioner here and in the Supreme Court of Ohio is Donald C. Hutchins, a citizen of the United States.

The Respondent here and in the Supreme Court of Ohio is the Complient Corporation. The Complient Corporation was dissolved in 2003 as a Delaware Corporation. It has no place of business in Ohio or elsewhere in the United States. Its former President, Steven Lindseth, is administering its liquidation from an address c/o 4670 Richmond Road, Suite 300, Warrensville Heights, OH 44128.

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Cases:

Grafton v. Ohio Edison Co. 77 Ohio St.3d 102 105, 1996-Ohio-336.

Statutes and Congressional Materials:

U.S. Const., art I, § 8, cl.8.
U.S. Const. amend 5
U.S. Const. amend 14
15 U.S.C. § 1051-1127, 17 U.S.C. § 101-810, 1001-1010
28 U.S.C. § 1332, 35 U.S.C. § 101-376

PETITION FOR A WRIT OF CERTIOARI

Petitioner Donald C. Hutchins respectfully petitions for a writ of certiorari to review the refusal of the Supreme Court of Ohio to hear the case on grounds that it does not involve any substantial constitutional question.

OPINIONS BELOW

The opinion of Supreme Court of Ohio was entered August 2, 2006 as Case No. 06-741.

JURISDICTION

This Court has jurisdiction over this petition under 28 U.S.C. § 1254(1). The Supreme Court of Ohio has passed jurisdiction to this Court due to federal subject matter jurisdiction granted by Congress under 35 U.S.C. § 101-376, 15 U.S.C. § 1051-1127 and 17 U.S.C. § 101-810, 1001-1010.

CONSTITUTIONAL and STATUTORY PROVISIONS INVOLVED

* The Patent, Trademark and Copyright Clauses conferred upon Congress the power to promote the Progress of Science and useful Arts. U.S. Const., art I, § 8, cl. 8, 35 U.S.C. § 101-376, 15 U.S.C. § 1051-1127 and 17 U.S.C. § 101-810, 1001-1010.

* Defendant's Fifth Amendment rights to due process.

* Defendant's Fourteenth Amendment rights to due process.

STATEMENT OF THE CASE

This case arises from the attempt of the Compliant Corporation ("Compliant") to obstruct the efforts of Donald C. Hutchins ("Hutchins"), a citizen of Massachusetts, to protect his intellectual properties from infringement. Hutchins is an inventor and the holder of many patents and copyrights including the intellectual properties ("properties") that embrace a device called CPR Prompt®. On July 2, 2004 Hutchins filed Civil Action 04-30126-MAP ("126") in the United States District Court, District of Massachusetts against Cardiac Science Inc., a company that disregarded his notice of infringement related to the manufacture and sale of devices that were infringing Hutchins' properties. Cardiac Science, Inc. was named sole defendant in '126.

The Compliant Corporation was dissolved as a Delaware corporation in October of 2003. Compliant had abandoned a license of Hutchins' properties without notice in October of 2003 after being delinquent for six months on royalty payments, reports and other obligations under the License Agreement. Hutchins had no choice but to void the License Agreement with Compliant and seek another licensee.

On August 27, 2004 Compliant filed Case Number CV04540066 ("066") in the Court of Common Pleas, Cuyahoga County, Cleveland, Ohio against Donald C. Hutchins and the CPR Prompt Corporation. Compliant was no longer in business as of August 27, 2004 the time '066 was filed.

¶38 of the 066 Complaint stated, "Hutchins' conduct in filing the Complaint in Hutchins v. Cardiac Science (i.e. federal patent action '126) constitutes a tortious interference with the APA among Compliant, Cardiac Science and CPR L.P. for which Hutchins is liable

to Complient for compensatory and punitive damages in an amount to be determined at trial but which amount is in excess of $25,000. ¶49 of the '066 Complaint stated, Hutchins' wrongful and illegitimate filing of his Complaint against Cardiac Science in the Massachusetts District Court, Complient has and will suffer compensatory and punitive damages in an amount to be determined at trial but which amount is in excess of $25,000 and includes, but is not limited to, any decline in the value of the shares of Cardiac Science common stock from October 21, 2004 to the date the stock is transferred to Complient as well as any and all attorney fees and costs incurred by Complient related to Cardiac Science's demand for indemnity. ¶58 of the 066 Complaint states, "An actual and justifiable controversy exists between Complient and the Defendants with respect to the construction and effect of both Section 3.10 of the License Agreement and Section 1.2(I) of the APA. ¶59 goes on to state, "A decision (of the Court) is therefore necessary and appropriate under these circumstances in order that Complient may ascertain the construction and effect of both Section 3:10 of the License Agreement and Section 1.2(I) of the APA."

On September 20th 2004, within a few weeks after Civil Action '066 was filed in Ohio, Hutchins filed a motion to dismiss '066 under Federal Rule 12(b)(1), "lack of jurisdiction," because the agreement cited by Complient is subject to arbitration and the patents cited are subject to federal jurisdiction. A second reason cited by Hutchins in his Motion to Dismiss was Federal Rule 12(b)(2) "lack of personal jurisdiction over the person." The Complient sale to Cardiac Science involved a $54 million dollar transaction. It was clear that the damages claimed by the Plaintiff exceeded the federal financial limit of $75,000 placed on litigation between citizens of different states. Judge Gallagher had no knowledge of these federal rules and denied Hutchins' Motion to Dismiss.

Compliant gained a declaratory judgment against the CPR Prompt Corporation immediately after the filing of Civil Action '066. Compliant succeeded with this declaratory judgment because the CPR Prompt Corporation made no appearance and did not answer or defend. Case law for the State of Ohio calls for a corporation to be represented by a licensed attorney. The CPR Prompt Corporation was in the state of dissolution and did not have the financial resources to underwrite the cost of representation in Ohio.

Hutchins was forced to defend himself *pro se* in Cleveland, Ohio which is over 800 miles from his home in Massachusetts. At a short meeting in the Judges chambers Judge Gallagher advised Hutchins that further hearings could take place with conference calls. Judge Gallagher also stipulated that she would await a judgment in federal Civil Action 04-30126-MAP to guide her judgment in Ohio. Judge Gallagher was true to her word through the ensuing eight months as she deferred the Ohio litigation. Finally she set a trial date for December of 2005 when it was expected the federal patent action would be finalized.

However, on July 11th 2005 Compliant's attorneys broke the silence by filing a Motion for Summary Judgment as to Donald C. Hutchins. This Summary Judgment included damage claims against only the one party, Donald C. Hutchins, for approximately $180,000 in compensatory $100,000 in punitive damages as documented by the Affidavit of Steven Lindseth. It is clear from Steven Lindseth's Affidavit that the damages suffered by Compliant were due to Compliant's misrepresentations to Cardiac Science in the APA. The indemnification to Cardiac Science was paid to the treasury of Cardiac Science and not to Hutchins. Compliant used Ohio Civil Action '066 only to extort money from Hutchins and to dissuade him from pursuing his federal patent infringement action.

Complient was awarded this Summary Judgment by Judge Gallagher in a fleeting instant with no hearings, no trial, no docketed reference to Hutchins' counterclaims, no written final order and no consideration of the many material facts as presented by Hutchins in various answers and briefs. There is no transcript because there was no discussion to transcribe.

In its Motion for Summary Judgment Complient declared that Hutchins is in privity with the CPR Prompt Corporation as the owner and President thereof. Complient's Motion continued this charade by alleging that, "*Res judicata* applies to Complient's claims against Hutchins by virtue of the default judgment obtained against CPR Prompt, Complient is entitled to summary judgment on Count III of its Complaint for declaratory judgment as a matter of law."

Judge Gallagher's judgment was based primarily on *res judicata*. The earlier declaratory judgment against the CPR Prompt Corporation was used in a domino effect against Hutchins. This declaratory judgment concerning the construction and effect of Section 3.10 of an obsolete license agreement was used in the form of *res judicata* to gain damages totaling $280,000 from Hutchins. There was never any deliberation or proof that Hutchins' conduct in filing the Complaint in Hutchins v. Cardiac Science constituted tortious interference.

On November 16, 2005 Hutchins' wife was served with a Summons in a Massachusetts Civil Action 05-1115 to enforce a foreign judgment in excess of $280,000 including punitive damages in excess of $100,000 claiming Hutchins had failed to honor the judgment from the originating court in Ohio. Mrs. Hutchins is being treated for severe depression from the thought of losing her home simply because her husband attempted to reclaim his intellectual properties from the Cardiac Science Corporation.

REASONS FOR GRANTING THE WRIT

As petitioner for this Writ, Donald C. Hutchins has raised constitutional questions in the originating Court, through the Ohio State Appeals Court and finally in the Supreme Court of Ohio. All these Ohio courts have declined to answer the federal questions of:

4. Whether a state may impose its jurisdiction and obstruct a legally filed and ongoing federal patent infringement action subject to the limits of the Due Process Clause of the Fourteenth Amendment.
5. Whether a state may deprive a citizen of another state of intellectual property without due process of law subject to the limits of the Fifth Amendment.
6. Whether the principle of "privity" and Ohio's prohibition against *pro se* representation for corporate entities can be applied in terms of *res judicata* against a co-defendant acting *pro se* in defense of his intellectual properties rights granted by Congress through 35 U.S.C. § 101-376.

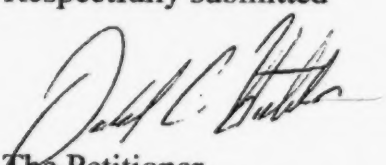
Recent publicity surrounding the *Blackberry* patent litigation has shown that users could have been hurt by the loss of the use the *Blackberry* software if injunctive relief in the form of shutting down the *Blackberry* network service had been awarded to the plaintiff. If an injunction had been granted, would the thousands of *Blackberry* users have been allowed to file for damages in state courts for being deprived of the use of the *Blackberry*? Would the Patent holder be forced to defend these thousand actions in all the states? These are questions begging for answers. Currently there is no specific federal legislation or established case law to prevent such an injudicious litigation in state courts.

While the federal courts have assumed responsibility for questions of employment, corruption, civil rights, etc. they must not forsake the few areas where they have subject matter jurisdiction. Hutchins has no other place to turn to find answers to the constitutional questions he has posed. The Supreme Court of Ohio has declined jurisdiction and passed the baton to the U.S. Supreme Court. Intellectual property owners are relying on your judgment.

CONCLUSION

If allowed to stand the decision against Hutchins would ravage patent litigation that is the province of the federal government. The lawsuit in Ohio against Hutchins must be reversed. A reversal would promote the orderly administration of the patent laws that were established by the Congress of the United States for all its citizens.

Respectfully submitted



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Dated: October 28, 2006